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THE PRIVATIZATION OF PRISONS

Helen McKenzie

Political and Social
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Research Branch
Ottawa

16 April 1986



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TABLE OF CONTENTS

	<u>Page</u>
PRISON INDUSTRIES.....	4
A. The United States.....	4
B. Canada.....	7
PRIVATE ENTERPRISE FOR SERVICE DELIVERY.....	9
A. The Role of Volunteers.....	10
B. For-Profit Service Delivery.....	11
PRIVATE OPERATION OF PRISONS.....	14
A. Non-Profit Operations.....	14
B. Prisons for Profit.....	15
PRIVATE ENTERPRISE TO BUILD PRISONS.....	20
DISCUSSION.....	22
A. Economic and Administrative Considerations.....	22
B. Legal and Political Issues.....	24
1. The Delegation of Responsibility.....	24
2. Staff Resistance.....	27
3. Continuity of Programs.....	28
4. Profits.....	29
5. Other Issues.....	29
CONCLUSION.....	29
BIBLIOGRAPHY.....	32
APPENDIX	



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THE PRIVATIZATION OF PRISONS

INTRODUCTION

The concept of "privatization" has been put forward in North America in recent years as a method of coping with the increasing difficulties of operating correctional systems within budgetary limits. The verb "to privatize" has been coined to indicate the passing of control from the public sector to the private sector. Essentially, it means to organize an undertaking previously in the public domain as a private enterprise or industry. The trend toward privatization has been called "the major unexamined new social policy of the 1980s".⁽¹⁾

The idea of the privatization of prisons challenges the previously accepted government monopoly of the correctional system and poses many questions concerning legal responsibilities. There are a number of reasons for the increased interest recently in this concept. In particular, growth in inmate population and a scarcity of public funds for correctional purposes have led administrators to consider alternatives to the traditional prison system.

In both Canada and the United States, prison populations and the costs of their care have risen substantially in recent years. The situation is particularly acute in parts of the United States where prisons have been operating at about 110% of their capacity⁽²⁾ and the courts have ordered that overcrowding be relieved. Governments and the public, however, generally are reluctant to pay the additional costs of building and operating adequate new facilities. In the United States, public

(1) U.S. Senator Arlen Specter, in Craig Becker and Amy Dru Stanley, "Prisons for Private Profit", the Sunday Star, Toronto, 7 July 1985.

(2) Susan M. Duffy, "Breaking Into Jail", Barron's, 14 May 1984, p 20-22 at p. 20.

spending on prisons has already increased by about 400% in the past 15 years.(1) To varying degrees, in both countries a situation of expanding needs and scarce financial resources, in a political climate encouraging free enterprise, has created opportunities for the private sector.

Although the privatization of prisons may seem to some a radical proposal, the concept is not new. The private sector has long been involved in corrections. In the 18th century, for example, English jailers were not salaried officials but were allowed to collect fees from their prisoners. In some cases, they sold ale in prison for profit. In the United States during the 19th century, many facilities of a correctional nature were run by religious groups. For a period of time, the State of California even contracted out to individuals the complete building and operation of a prison, an enterprise so poorly managed that the State eventually "bought out" the contract.(2) After the turn of the century, privately run juvenile correctional services developed. They grew rapidly in the United States during the 1960s, with "Great Society" funding, until by 1974 almost a quarter of the juvenile delinquents diverted from institutions there were sent to private agencies.(3)

In the operation of present-day correctional systems in Canada and the United States, the private sector plays an important role, with both businesses and voluntary agencies involved.

There is scope for privatization in nearly every branch of the correctional system. Extensive use of the concept has been made

(1) George E. Sexton, Franklin C. Farrow and Barbara J. Auerbach, "The Private Sector and Prison Industries", National Institute of Justice, Research in Brief, U.S. Department of Justice, Washington, D.C., August 1985, p. 1.

(2) Charles K. Talbot (ed.), Privatization in Canadian Corrections: A More Economical and Humane Solution?, University of Ottawa, Ottawa, 1981, p. 1.

(3) Philip B. Taft Jr., "The Fiscal Crisis in Private Corrections", Corrections Magazine, Vol. VIII, No. 6, December 1982, p. 27-32 at p. 29.

already in Canada, for example, in the contracting by Operational Information Services for the management of its computer system and in the use of private sector resources in staff training and recruiting.⁽¹⁾ In the last decade, the Correctional Service of Canada (CSC) has contracted with the private sector for such things as chaplaincy, aftercare, fire protection, refuse removal and education of staff and inmates.⁽²⁾

A survey of private sector involvement in corrections in the United States published in February 1984, indicated the existence of "37 adult and 29 juvenile agencies in 39 state jurisdictions and the District of Columbia that use 32 types of services and/or programs from the private sector".⁽³⁾ The services were mostly in juvenile agencies and most often concerned health, education or vocational training, halfway house or after-care programs and staff training.

Privatization, therefore, may take place in a variety of forms, such as in the organization of prison industries and the use of private enterprise to build prisons or for service delivery. In some cases, entire correctional establishments have been operated by the private sector.

This paper describes the operation of these kinds of enterprises in the United States and Canada and discusses the benefits of such a policy and some of the inherent problems and economic, legal and political implications. Some examples of the various kinds of privatization in practice recently are discussed.

(1) H. Friel, "Operational and Resource Management, Review #7, Privatization", Department of Solicitor General, Ottawa, September 1985, p. 37.

(2) Ibid., p. 5.

(3) Camille G. Camp and George M. Camp, "Private Sector Involvement in Prison Services and Operations", Criminal Justice Institute, South Salem, N.Y., 1984, p. 6.

PRISON INDUSTRIES

A. The United States

The development of the "Free Venture Model" of prison industries in the United States attempted to focus on productive labour with private sector efficiency.⁽¹⁾ It envisioned self-supporting or profit-making businesses within a realistic work environment, wages based on output, training for transferable job skills and at least partial reimbursement to the state by inmate workers for their custody. The use of this kind of model previously in Sweden had raised expectations that, aside from its economic value, it would promote rehabilitation and decrease recidivism among participating inmates.

The Chief Justice of the United States, Warren E. Burger, since 1981 has advocated "factories with fences" rather than "warehouses with walls" as correctional models.⁽²⁾ He has urged the repeal of laws restricting the sale of goods made in prison. Private sector participation in prison industries has been gaining popularity since 1980. More than half of the States have adopted legislation for some kind of private sector involvement in their prison work programs. Nine states specifically permit private sector employment, contracting and open market sales while six others have passed legislation specifically prohibiting such activity.⁽³⁾

Generally, private sector involvement has taken two forms: most commonly, prison-based operations using inmate labour managed by the Department of Corrections and less frequently, prison industries completely operated by the private sector.

(1) Talbot (1981), p. 28.

(2) Sexton et al (1985), p. 1.

(3) Ibid., p. 4-5; see Table 1, Appendix.

In the first type of operation, under contract with the Department, materials and equipment are supplied and products sold privately while the necessary working space and supervision is provided by the Department. A number of such prison-based private enterprises were in operation in 1984, including the following:(1)

- In Arizona, the Best Western hotel chain installed computer terminals in a women's institution, where 30 inmates made hotel reservations.
- In Mississippi, the Koolmist air conditioning corporation under contract with the Department, supplied raw materials and equipment for 20 inmates to manufacture condensing units under supervision of the prison authorities.
- In Minnesota, Control Data Corporation began a computer component assembly line at Stillwater state prison in 1981, training 45 inmates to manufacture disc drives. Later, the Department took over management of the industry, with Control Data purchasing finished products.

Another development through private initiative at Stillwater was a light metal manufacturing foundry employing 116 inmates to make farm equipment.

- In Iowa, Kansas, Nevada, Utah and Washington, private firms also employed inmates for various small enterprises.

In a few states, rather than just contracting with the Department for inmate labour, private entrepreneurs have built or leased property and have directly managed and operated prison-based industries. In some instances, the Department has undertaken a joint management role.

In Florida, legislation in 1981 provided for the establishment of a nonprofit corporation, Prison Rehabilitative Industries and Diversified Enterprises (PRIDE), to operate and manage prison industries.

(1) Joan Mullen, Kent John Chabotar and Deborah M. Carrow, et al, "The Privatization of Corrections", National Institute of Justice, U.S. Department of Justice, Washington, D.C., February 1985, p. 3 and 20-21.

Businesses contributed \$200,000 to launch the venture. The purpose of PRIDE was to reduce the government's costs for incarceration while at the same time supporting the needs for security and rehabilitation of offenders. It was based on the idea that prison industries should be profitable.

In 1982, PRIDE assumed control of its first prison industry, the printing operations in Zephyrhills Correctional Institution. It subsequently came to manage more than 22 kinds of prison industries in Florida, including an optical laboratory, print shops, furniture manufacturers, metal fabrications, agricultural and other industries. By July 1984 it had assumed control over all of Florida's prison industries and by 1985 employed about 1,800 inmates, approximately 8% of the eligible prison population.⁽¹⁾

PRIDE provides vocational training to inmates and sells its products to state and local governments. Profits are reinvested in the corporation. It is restricted from undue competition with the private sector -- only its raw agricultural products can be sold to private markets. Inmates receive a low hourly wage, 70% of which is paid to the state for room and board.⁽²⁾

Another nonprofit organization operates an independent prison industry in Minnesota. The Stillwater Data Processing Systems Inc. was formed in 1976 with grants from private foundations. It employs about 10-12 inmates on computer programming projects for clients which include the state, Control Data and a St. Paul insurance company.

In Michigan the City Venture Corporation, a for-profit consortium of ten companies and two religious organizations, works with the public, private and community sectors to plan and carry out job creation and urban revitalization programs in economically distressed inner cities. At the Huron Valley correctional facility in Ypsilanti, in connection with the Huron Valley Project, it is building a model industries program which is expected eventually to employ 150 inmates.⁽³⁾

(1) Mullen et al (1985), p. 22.

(2) Ibid.

(3) Ibid., p. 23.

A survey published in 1985 indicated that there are few innovative arrangements for employing inmates outside institutional settings.⁽¹⁾ One non-traditional work-release program in the United States is operated outside the grounds of Leavenworth Prison in Kansas. A sheet metal company, Zephyr Products Inc., in recent years has employed about 30 Leavenworth inmates who travel by bus daily at their own expense to and from work with an unarmed prison guard. They earn the minimum wage and pay room and board to the state. Although they must leave the company when they are released on parole, the work experience helps them to find jobs in other machine shops.

In spite of the appearance of a trend toward privatization, at the time of the survey it was found that relatively few inmates were involved in private sector industries in the United States -- fewer than 1,400 out of about 34,000 state prison inmates in industry programs.⁽²⁾

B. Canada

In Canada there has been some movement toward the Free Venture Model of prison industries. Some years ago, the Joyceville Industries Pilot Project in Ontario was designed to operate on the profit motive. It was organized within the federal corrections system, not in conjunction with private industry. The project was reported to have had limited success because the use of prison staff as industrial managers meant that lack of expertise and bureaucratic procedures complicated sales and marketing processes.⁽³⁾

At the Guelph Correctional Centre, in a project of the Ontario Ministry of Corrections, some 40-50 inmates work with outsiders at a meat packing plant. These inmates have been screened and are granted temporary absence passes. A private employer leases the required space, operates the plant, pays the inmates "street" or market wages (from which normal tax deductions are made) and sells the product on the open market.

(1) Ibid.

(2) Ibid., p. 2.

(3) Talbot (1981), p. 30.

The Ministry has monitored the balance between profit for the employer and training for the inmates, who are treated as members of a disadvantaged labour force rather than charges on the correctional system.(1)

A similar operation is carried on at Maplehurst, near Milton, Ontario. There, a private firm leases space from the provincial corrections authorities and pays inmates normal wages for the assembly of automobile parts.(2) The inmates pay the Ministry for their room and board.

Another prison industry in Ontario with private sector participation is at Mimico Correctional Centre, Toronto, where a prison mattress factory is completely managed and supervised by a private company which pays the inmate workers wages at a rate set by the company.(3) These industries are operated as joint ventures with the participation of the Ministry of Corrections and the private sector. Goods are sold to correctional or other government institutions or nonprofit organizations.

A different type of business arrangement with the private sector has been carried on at the Vanier Centre for Women in Brampton, Ontario. In a cottage industry training program for inmates there, various projects are undertaken on contract for private companies. For example, hinges may be assembled or mats or other items finished. The income from the work is applied to offset costs of operating the Centre.(4)

At the federal level in Canada there is one joint venture prison industry in operation -- the Springhill Tree Nursery Operation in Nova Scotia. The Correctional Service of Canada supplies the labour force of inmates from Springhill Penitentiary and the Scott Paper Company provides the supervision and pays the provincial minimum wage, from which pension and tax deductions are made. The participating inmates pay room

(1) Ibid.

(2) Information provided by spokesman for Offender Programming Branch, Ontario Ministry of Corrections, Toronto, by telephone, 26 March 1986.

(3) Ibid.

(4) Ibid.

and board and receive training as nurserymen. The Tree Nursery was officially opened in 1980 and provides work for a maximum of about 20 penitentiary inmates.(1) Annual funding for the nursery is provided jointly by the Correctional Service of Canada and the Scott Paper Company.

Although about 16% of prisoners in CSC institutions work in prison industries, only about 400 of them (6%) work for outside, privately operated industries, usually for minimum wages.(2)

PRIVATE ENTERPRISE FOR SERVICE DELIVERY

A well established form of privatization in the correctional system is the use of private enterprise for service delivery, particularly in the area of post-release supervision. Such major programs as probation and parole originated as private initiatives.(3)

Privatization has grown rapidly in recent years in Canada in the area of labour-intensive programs used as alternatives to imprisonment. Included in this category are probation, community service orders, victim-offender reconciliation programs and restitution services. In Ontario, for example, funding for such community-based services by the provincial Ministry of Correctional Services increased by 145% between 1975 and 1980.(4)

Privatization of services may be achieved either by contracts undertaken for profit or by the voluntary sector.

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- (1) Information provided by Director General, Education, Training and Employment, Correctional Service of Canada, by telephone, 21 February 1986, and correspondence, 25 February 1986.
 - (2) Canada, Study Team Report to the Task Force on Program Review, The Justice System, Supply and Services, Ottawa, 1986, p. 303.
 - (3) Talbot (1981), p. 11.
 - (4) Ibid., p. 2.

A. The Role of Volunteers

Volunteers have long been used in corrections in both Canada and the United States. They have the obvious advantage of providing extra manpower with minimal costs. By the use of non-professional, trained volunteers, the availability of services of reasonably good quality may often be increased without raising costs.

Volunteers have provided a great variety of services in the correctional setting in Canada. The CSC Offender Programs Branch makes extensive use of volunteer and nonprofit agencies. For example, workers of the John Howard Society provide pretrial, probation and counselling services, assistance for family visits and career clinics or life skills programs to prepare for employment. At Kingston Penitentiary, the Society's vocational counsellors act as liaison officers between inmates and Canada Manpower centres in home communities. At the provincial level, also, services are provided by volunteers. In Toronto, for example, the John Howard Society operates bail supervision programs, funded by the provincial Ministry of Corrections.

Other non-profit social agencies, notably the Salvation Army and the Elizabeth Fry Society, also provide services such as parole supervision and half-way houses. Volunteers staff programs to deal with drug and alcohol abuse as well as providing literacy training to offenders.

Research in Canada about 25 years ago showed that parole supervision by volunteers of the John Howard and Elizabeth Fry societies was significantly more effective than that of the government Parole Service.⁽¹⁾

Although the private sector has traditionally provided such services less expensively than governments, this situation may be changing

(1) Ibid., p. 11.

as a result of pressures for increased accountability and the growing reluctance of nonprofit providers to deliver services for low wages.(1)

In the United States also, volunteers play an important role. For example, they teach and counsel inmates in the evenings in the "PACE" program at Chicago's Cook County Jail. In New York State, there were in 1983 about 3,000 regular volunteers serving in the correctional system and more performing volunteer services on an irregular basis.(2) The "VISTA" program in that state has provided tutors for about 1,000 prisoners per year.(3)

A successful experiment, "Project Crest", was carried out by the Florida Division of Youth Services. In this project teams of paid and volunteer university students provided counselling services for delinquents, the volunteers working with the less serious cases. Over a six-month period, the Crest group demonstrated significant improvement compared with a control group receiving normal supervision.

B. For-Profit Service Delivery

The profit motive introduces a different dimension to the private sector provision of services. The emphasis on cost-efficiency may adversely affect the quality of services and increase the necessity for recognized standards.

The Correctional Service of Canada has wide experience in contracting with the private sector for services and expertise, for example in computer science, engineering, health sciences and other specialized fields.(4) Private resources have been used for staff training and

(1) The Justice System (1986), p. 301.

(2) James B. Jacobs, New Perspectives on Prisons and Imprisonment, Cornell University Press, Ithaca and London, 1983, p. 205.

(3) Ibid.

(4) Friel (1985), p. 7.

recruiting and for technical services such as telecommunications, construction and maintenance. Most educational instructors are hired through private sector contracts.

The Service regularly has long-term agreements with community medical practitioners, clinics and hospitals. About half of the medical and dental staff in CSC are privatized.(1) Short-term contracts for services are made as needed with consultant psychiatrists. The CSC is preparing to test some pilot projects with entire health care units privatized.(2)

In some federal institutions, non-sensitive security positions have been contracted to commissionaires.

At the provincial level also, contracting with the private sector for particular services is common. The Ontario Corrections authorities purchase private services of various kinds, for example, medical care and food catering. Ontario also has contracted out prison food services to a catering company which employs inmate workers.(3)

Alberta has experienced success in contracting with native organizations for the delivery of services to its native offenders. In that province, food and laundry services have been privatized in most correctional centres. The cost and quality of the food service provided have been found to be satisfactory.(4)

There is also widespread privatization of services in correctional systems in the United States. By mid-1985, private firms were providing services, ranging from job training to meal preparation, in publicly managed prisons in 39 states and the District of Columbia.(5)

(1) The Justice System (1986), p. 301.

(2) Ibid., p. 304.

(3) Friel (1985), p. 40.

(4) Ibid.

(5) Becker and Stanley (1985).

Although much of the experience of private sector contracting for prison services appears to have been satisfactory, there are some potential problems. The kinds most often reported in a 1984 American study involved difficulty with the contracting process, poor service, poor contracting relationships and lack of cost-effectiveness.⁽¹⁾ Some service contracts in the United States were terminated because of failure to provide the service itself or the quality required.

Some concern has been expressed that the private companies responsible for contracted services may place a higher priority on profit maximization than on the delivery of high quality, professional services. While staff of private, nonprofit agencies have traditionally provided services with a caring, personal perspective, it remains to be seen whether profit-oriented companies will maintain these qualities in service provision.

A main problem with the policy of contracting with private agencies for service delivery is that the motivation of economy results in contracts being given to the lowest bidder, generally the one with the least investment in personnel training. To overcome this tendency, there has been a movement in Canada toward setting firm operational standards for services, for example, in parole and probation supervision and the operation of half-way houses.⁽²⁾ Because the number of private suppliers of services is small, there is some concern about the government's ability to ensure compliance with standards by replacing unsatisfactory suppliers.⁽³⁾

(1) Camp (1984), p. 24.

(2) Talbot (1981), p. 32.

(3) The Justice System (1986), p. 302.

PRIVATE OPERATION OF PRISONS

Although some kinds of correctional institutions have been run by the private sector on a nonprofit basis for many years, the operation for profit of whole prison facilities is a departure from usual and established practice.

A. Non-Profit Operations

Voluntary organizations across Canada for many years have operated institutions such as group homes for juveniles in trouble and half-way houses for adult offenders released on probation or parole. For example, the John Howard Society has operated Gerrard House in Toronto as a community resource centre, accepting referrals from Mimico Correctional Centre through the temporary absence program. Its Howard House in St. John's has provided a residential centre for male adult offenders on parole, probation or temporary absence.

The Society also has provided and managed various half-way homes for young offenders such as Ramsay House in Calgary for those on temporary absence and the community-based Attendance Centre in Niagara Falls for those on probation and under a court order to attend.

Similarly, correctional residences have been operated by voluntary organizations in the United States. The Volunteers of America, for example, have run halfway homes for released prisoners for several years.

In 1984, there was an urgent need in Ramsey County, Minnesota, for a facility to house women offenders serving short sentences. The Volunteers of America contracted with the county and federal governments to house these prisoners for a daily fee per inmate. The Volunteers of America Regional Corrections Center opened in September 1984, becoming one of the few privately owned and operated correctional

facilities in the United States.(1) The Center began with a capacity to accommodate 30 women. The operation has been considered experimental.

Private enterprise became engaged in the operation of a large institution in 1982 when the State of Florida contracted with the nonprofit Eckert Foundation to assume control of a state prison for some 400 juvenile delinquents, the Florida School for Boys at Okeechobee. At the time, it employed a staff of about 200.

Some advantages of this new arrangement have been more flexibility, with decisions made more quickly, the cost of work the same or lower, more success in recruiting staff and a superior educational program.(2) In addition, the juveniles' attitudes in dealing with staff were found to be good.

The Eckert Foundation also runs juvenile facilities in Pennsylvania, Rhode Island, Michigan and Washington.(3)

B. Prisons for Profit

The most controversial form of privatization in the corrections system is contracting with the private sector for the operation for profit of entire prison facilities.

The United States has led the way in this direction in recent years. Private business-oriented companies in that country have become well established in the operation of residential institutions for juvenile delinquents. An example is "Tall Trees", a non-secure facility in Memphis, Tennessee, for about 35 youths. It is managed by Corrections Corporation of America for the Juvenile Court of Memphis. The cost to the

(1) E.R. Shipp, "Group Aiding Ex-Convicts Begins Running a Jail", The New York Times, 17 February 1985.

(2) Camp (1984), p. 35.

(3) Ibid., p. 33.

county government was reported in 1985 to be \$33.25 per inmate each day, less than half the cost at the state training school.⁽¹⁾

The RCA Service Corporation for several years has operated a treatment centre for some 22 inmates from 14 to 18 years of age, some of whom have committed violent crimes and most of whom have drug-related problems. This is the Weaversville Intensive Treatment Unit near Allentown, Pennsylvania, probably the first modern private detention institution. It opened in 1975. It has earned the company only modest profits and is reported to be well run.⁽²⁾

By July 1985, six states were reported to have made agreements with private companies for the operation of juvenile detention facilities. In addition, private firms under contract with the Immigration and Naturalization Service (INS) have operated detention centres for illegal immigrants, particularly in California and Texas. Behavioral Systems Southwest has contracted with the INS to operate detention facilities also in Colorado and Arizona.⁽³⁾

The idea of completely operating adult prisons for profit is said to have originated with Thomas Beasley, a former chairman of the Tennessee Republican Party.⁽⁴⁾ He was instrumental in establishing in 1983 the Corrections Corporation of America (CCA), based in Nashville, Tennessee. The stated intention of the company is "to manage, design, construct and/or own detention and correctional facilities" in seven

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- (1) Martin Tolchin, "Jails Run by Private Company Force it to Face Question of Accountability", The New York Times, 19 February 1985.
 - (2) Kevin Krajick, "Punishment for Profit", Across the Board, March 1984, p. 20-27 at p. 23.
 - (3) Camp (1984), p. 36.
 - (4) John Egerton, "The Tennessee Walls", The Progressive, September 1984, p. 19.

categories, including adult as well as juvenile institutions, with both minimum and maximum security arrangements.(1)

One of the objectives of the corporation is to "merge the proven principles of free enterprise with the highest standards of corrections practice".(2)

The company has documented the reasons why it may be expected to be economically competitive with governmental operations. These are: careful design of the facility to permit personnel economies, mass purchasing, "judicious" employment (not maintaining excessive personnel) and the fact that the corporation "is not required to operate under cumbersome bureaucratic purchasing regulations which, inevitably, increase the cost of supplies and materials".(3)

By 1985 the CCA managed and operated, in addition to the Tall Trees residence previously mentioned, two processing centres for undocumented aliens at Houston and Laredo, Texas; the Fayetteville Community Treatment Center in North Carolina, for pre-release and alternative sentencing programs; and the Silverdale penal farm in Tennessee.

Silverdale Detention Center was turned over to the CCA by Hamilton County in Tennessee in October 1984. It became the Silverdale Work Farm Facility. With a capacity of about 325 inmates, it houses a mixture of county prisoners serving short terms for misdemeanours and state felons with longer terms. It charges the county a daily fee (\$21 in 1984) for each prisoner.(4)

(1) Corrections Corporation of America, "Executive Summary", undated, p. 3.

(2) Ibid.

(3) Ibid.

(4) Mullen et al (1985), p. 61.

The contract with the county requires CCA to meet certain standards and procedural requirements related to staffing, food service and financial affairs. The Silverdale Facility operates county work programs, for example, road or vehicle maintenance and institutional work programs, such as food service and maintenance jobs.(1)

In California, Eclectic Communications Inc. owns and operates Happy Valley Ranch, a minimum-security prison near San Francisco, housing about 64 inmates. The company staff, providing counselling, job training and other services as well as security duties, receive less pay than comparable public prison guards.(2)

The National Corrections Corporation, based in Denver, Colorado, although primarily involved in the construction of jail facilities, has now expanded its interests to prison operations as well.

By March 1985 there were reported to be in the United States about 24 large prisons of various kinds owned and/or operated by private enterprise.(3)

There are legal impediments to the private operation of jails in some states. Contracting for correctional services does not, however, appear to be prohibited by law in most states, while in a few there are statutes expressly permitting private sector contracting.

New Mexico, for example, in response to a serious problem of overcrowded jails, passed legislation in 1984 authorizing counties to contract out the building or operation of new correctional facilities.(4) Texas also has passed legislation to authorize the private operation of prisons.

(1) Ibid.

(2) Bert Hill, "Privately-run prison likely: PS official", The Citizen, Ottawa, 27 June 1985.

(3) The Economist, 16 March 1985, p. 40.

(4) Gest (1984), p. 45.

The National Governors Association of the United States adopted a resolution in 1985 declaring that "States may wish to explore the option of contracting out the operation of prisons or other correctional programs. Private enterprise would be expected to run prisons in an approach similar to the way it now operates hospitals, drug and alcohol treatment programs or job training programs for government." The resolution warned, however, that "States should approach this option with great care and forethought. The private sector must not be viewed as any easy means for dealing with the difficult problem of prison crowding".(1)

Although there has been some movement toward privatization, there are still relatively few inmates in the United States in privately operated institutions.

In Canada, the federal Correctional Services in 1985 studied a proposal to contract with a private firm for the construction and operation of a minimum-security institution in British Columbia. If completed, this contract would have established the first prison in Canada to be privately run and operated for profit.

The proposal envisioned a prison camp on Harrison Lake, to be used as a working and training base for 20 to 30 adult offenders who would be paid private-sector rates to plant trees, cut firewood and improve fisheries.(2) Spokesmen for both the Public Service Alliance of Canada and the B.C. Government Employees Union voiced disapproval of the plan.(3)

(1) Martin Tolchin, "Governors Cautious in Endorsing The Private Operation of Prisons", The New York Times, New York, 3 March 1985.

(2) Hill (1985).

(3) Keith Fraser, "Private Jail Hit", The Province (Vancouver), 3 July 1985.

The proposal was put "on hold" when the CSC undertook a task force investigation of the whole area of privatization of prisons.(1)

The Commissioner of Corrections in Canada issued a formal statement in October 1985 that the operation of an entire institution was not under consideration.

PRIVATE ENTERPRISE TO BUILD PRISONS

In the United States, governments at the state and local levels have been turning increasingly to private enterprise for the construction of prisons. Private firms have boasted "that they can build in a year a prison that would take government contractors, struggling with bureaucratic hindrances and possible pay-offs, six or seven years to put up".(2) New Mexico is among the states that have authorized counties to contract out the building of new correctional facilities.(3)

A new development in recent years has been the contracting by local governments with private companies for the construction of facilities which are then leased back to the government. In particular, lease-back arrangements may be made in situations where voters have refused to authorize bond issues or increase taxation for the purpose of building prisons. Lease-purchase deals offer a means of bypassing resistance by American taxpayers.

This is essentially the process that took place in New York State after voters in a 1981 referendum rejected a proposed bond issue to build a prison. The legislature subsequently authorized the Urban Development Corporation to float bonds for its construction. However,

(1) Information provided by Director of Public Information, CSC, by telephone, February 1986.

(2) "Going Private", The Economist, 16 March 1985, p. 40.

(3) Ted Gest, "Prisons for Profit: A Growing Business", U.S. News and World Report, 2 July 1984, p. 45-46 at p. 45.

considerable opposition developed to these arrangements and the constitutionality of the plan was challenged.

Legislation was introduced in Congress in 1984 to increase substantially the tax benefits available for such construction and leaseback enterprises. It would allow prison financiers to claim investment tax credits and accelerated deductions for depreciation.⁽¹⁾

It is argued that leaseback arrangements would reduce construction costs because private builders would not be subject to the same procedural requirements, such as competitive bidding, as local governments. "While local governments often take three or four years to build a new corrections center" because of procedural and purchasing constraints, "private groups have built such facilities within six months".⁽²⁾

A leaseback plan was developed for Jefferson County, Colorado, following a Federal Court order to relieve prison overcrowding there. After sales tax proposals to fund the construction of a new jail had twice been rejected by voters, the county commissioners concluded a lease-purchase agreement with a private firm. Under the terms of the contract, "certificates of participation" were sold to investors, with the proceeds used for construction of a jail building to be leased to the County. At the end of the 10-year lease, the County is to own the jail.⁽³⁾

Since payments under the contract are conditional on appropriation of funds each year by the county commission, the arrangement is not considered long-term debt and does not require voter approval.⁽⁴⁾

(1) The Prison Construction Privatization Act, sponsored by New York Senator Alfonse D'Amato, was referred to committee for study in July 1985.

(2) Martin Tolchin, "Companies Easing Crowded Prisons", The New York Times, 17 February 1985.

(3) Duffy (1984), p. 20.

(4) Ibid.

The major issue over lease-purchase arrangements has not arisen in Canada because the decision-making process concerning funds for prison construction is very different in this country. The design and construction of new Canadian penitentiaries, however, have been largely privatized through Public Works contracts.⁽¹⁾

DISCUSSION

The concept of privatization of prisons as an accepted state policy raises a number of issues -- economic, administrative, legal and political. They concern the obligations of public agencies and private providers and the rights of inmates and the public.

A. Economic and Administrative Considerations

The argument made in favour of privatization is that prisons may be run more economically and efficiently by the private sector than by government. Without bureaucratic complexities and civil service regulations, with lower employee pension and benefits costs and market incentives to increase productivity, lower costs of operation might be expected.

A national overview of United States experience in this regard concluded that "Generally speaking, private sector services are more cost effective than the same agency-provided ones".⁽²⁾

Researchers in that country identified a number of advantages in the private operation of juvenile correctional facilities and immigrant detention centres. These private undertakings were found to be less costly and more flexible than those in the private sector, and to have

(1) The Justice System (1986), p. 301.

(2) Camp (1984), p. 6.

"more efficient management and better handled personnel matters".⁽¹⁾ Improvements in programs and services, prison industries and public relations were cited.

On the other hand, there was concern that "the care and treatment of individual inmates would suffer under private management and that contractual problems would arise, particularly if the contractor tried to save dollars by cutting corners. Thus it would seem that the potential gains in a more streamlined management and operational system must be weighed against a cutback in meeting the needs of individual inmates."⁽²⁾ There is some concern that cost savings or profit might be made at the expense of sound and fair administrative practices.

It has been suggested also that the cost to the state of monitoring private prison enterprises is a potentially large expense that has not been adequately assessed.

Valid overall cost comparisons are difficult to make for a number of reasons. For example, most privatization has taken place in facilities for low-risk offenders, a situation not comparable to public institutions housing some dangerous inmates as well. In addition, operating costs of private institutions may be expected to increase if employees are required to comply with professional standards set by the state.

Some recent American examples of cost comparisons have been reported in the press. In 1985, it was estimated that the Corrections Corporation of America charged the Immigration and Naturalization Service \$23.84 per prisoner per day to operate its institution in Houston, compared with a cost of \$30.26 in federal facilities.⁽³⁾

In operating the Silverdale facility in Tennessee, the CCA expected to "turn a profit by being more efficient than the county, using

(1) Ibid., p. 36.

(2) Ibid.

(3) Becker and Stanley (1985).

mass purchases and reducing the labor costs, including the pensions, that are paid by the county".(1) It charged \$21/day compared with \$24/day which the county had previously spent.

The State Governors in 1985 considered privatization of prisons because of soaring spending and deficits, taxpayer pressure and "burdensome union contracts, pension plans and patronage obligations".(2)

B. Legal and Political Issues

1. The Delegation of Responsibility and Power

In the event of privatization, a legal issue of primary importance is to define "where the jurisdiction's legal authority and responsibility ends and where the private contractor's begins".(3) This may not be a simple matter. Liability in the event of a lawsuit, however, will depend in large part on the assignment of responsibility.

Prisons, being the means of depriving individuals of their liberty, represent the exercise of the power of the state. The right to punish is at the centre of political power. Therefore, to attempt to delegate this power to private operators raises many questions.

In this respect, to place the operation of a prison wholly within private control is a much more serious and complicated undertaking than simply contracting for the provision of certain services. In a privately operated prison, company employees assume the power to restrict the freedom of prisoners and to make decisions affecting their lives in

(1) Martin Tolchin, "Privately Operated Prison in Tennessee Reports \$200,000 in Cost Overruns", The New York Times, 21 May 1985.

(2) Tolchin (3 March 1985).

(3) Camp (1984), p. 26.

many ways, for example, in assessing credit toward earning parole. The Houston Civil Liberties Union has argued that the American Constitution does not allow the government "to retail out the detention of human beings".(1)

There may be statutory limits on the ability of a correctional agency to delegate responsibility. In such cases, the ability to contract may be seriously curtailed. On the other hand, the effect of enabling legislation which authorizes contracts for the provision of services may also be questioned. The lack of such legislation may be interpreted as licence, since such contracting is not prohibited, or as prohibition, since it is not specifically authorized. The legal implications of contracting out are not clear-cut. Interpretations may vary.(2)

An agency would want to delegate both authority and responsibility to the provider of services. However, even when authority to contract is provided by statute, there may be other law in force dictating that the agency is ultimately responsible for prisoners who remain, from a legal point of view, in its custody.

In some situations, therefore, it may not be possible to delegate this responsibility. There is no legal principle establishing the right of a public agency or official to avoid liability by delegating services to a private vendor.(3)

The division of legal responsibilities, therefore, toward inmates and the public as well, remains to be clarified. For example, in the event of a riot or an escape from a privately operated prison, to what extent would the company be responsible for property damage done? If a

(1) Becker and Stanley (1985).

(2) Camp (1984), p. 27.

(3) Joan Mullen, "Corrections and the Private Sector", National Institute of Justice Reports, U.S. Department of Justice, May 1985, p. 1-7 at p. 6.

mistake is made by a company employee concerning the rights of a prisoner, is the private contractor answerable alone? These are among the many problems which may arise out of privatization.

The propriety of transferring to any degree the power to control individual movement and to limit freedoms is questionable from the point of view of the rights of the prisoner. In particular, the administration of discipline or exercise of force by others than agents of the state is open to challenge.

The most serious issue to be addressed involves the use of "deadly force". The state is vested with the coercive power necessary to enforce the law. It has been argued that the responsibility to use this power cannot be delegated to the private sector.

In the United States, the American Civil Liberties Union (ACLU) has challenged the legal validity of contracting for private incarceration. This action grew out of an incident in 1981 in which stowaways held by a private agency attempted an escape, which resulted in one of them being shot to death by a guard. It is hoped that the ruling from this case will at least ensure the enforcement of standards of care.⁽¹⁾ The INS now includes in its contracts with private managers detailed specifications of standards and conditions of confinement.

There is concern in Canada about the potential for problems in any plan to contract out to profit-oriented companies the functions of Peace Officers or Officers of the Court, with their attendant authority to use force and their protection from criminal responsibility in carrying out their lawful duties.

In its consideration of privatization in recent years, the Government of British Columbia excluded any services with staff designated as Peace Officers or Officers of the Court. This meant the operation of

(1) Mullen et al (1985), p. 68.

custodial facilities would not be privatized.⁽¹⁾ It was considered that, although enabling statutes might not preclude the possibility of delegating the duties of these officers to persons other than public servants, it might be assumed that the legislators did not intend this authority to be removed from the direct control of the state. Extending the involvement of the community in the justice system to include the provision of these services by private firms (especially profit-oriented ones) was considered to "offend the philosophical premises of the state's authority and responsibility".⁽²⁾ It might, in addition, fragment the criminal justice system and diminish the state's accountability for the use of discretionary authority and of coercive powers.

Others have agreed that "for the state to abdicate its power of punishment to the lowest corporate bidder will seal off prisons ... from ... popular controls", and have argued further that it "will also sever any connection between justice and punishment, transforming the terms of the debate over the social objectives of incarceration from retribution, deterrence and rehabilitation to productivity and profit".⁽³⁾

2. Staff Resistance

There are other political concerns over the loss of control by the public sector of correctional programs. The sharing of administrative power with a provider in the private sector may be expected to cause some tension among state employees and anxiety over a perceived threat of job losses. It has been suggested that loss of influence of the

(1) E.W. Harrison and M.G. Gosse, "Privatization: A Restraint Initiative", Corrections Branch, Ministry of Attorney-General, Victoria, British Columbia, 9 September 1985, p. 2.

(2) Ibid., p. 8.

(3) Becker and Stanley (1985).

administrator might even "be more of an inhibitor to expanding the role of the private sector than the actual loss of employment for state workers".(1)

Prison officials, however, are concerned about the lack of accountability in contracting out for services as well as the issue of control. Generally, they prefer to have institutional workers accountable to them in order to maintain control over the quality of service delivery.

3. Continuity of Programs

In addition, questions of continuity are raised by the fact that in economically difficult times governments may have a tendency to cut assistance for nonprofit, voluntary operations such as halfway houses before reducing the funding of government-operated correctional programs.

Budget cuts in particular and economic and political pressures in general placed a serious strain on American private providers of programs in the early 1980s. In December 1982, it was stated that, "Although private vendors have always maintained that their programs are flexible and inexpensive alternatives to incarceration, they are falling prey to a fundamental law of economics: in difficult times, institutions -- including corrections agencies -- draw inward and protect their own."(2)

The recent experience of British Columbia, however, appears to have been quite different. In that province, there was a strong political commitment on the part of the government to reduce the number of provincial employees. Privatization in these circumstances represented a means of continuing some correctional services that would otherwise have been discontinued.(3)

(1) Camp (1984), p. 28.

(2) Taft (1982), p. 32.

(3) Harrison and Gosse (1985), p. 3.

4. Profits

A potentially major political concern relating to privatization of services for profit "revolves around the question of how much profit is enough. Should the taxpayer be expected to bear the burden of paying for services plus the profit expected to be gained?"⁽¹⁾

Although most experience to date has been that privatization has not increased costs to the government, it is conceivable that at some future time the taxpayer might be expected to bear a heavier burden for private rather than publicly supplied services.

5. Other Issues

Other political issues may arise as a result of unintended effects of privatization on public policy. Some of the questions to be considered in this regard are, for example, the following:⁽²⁾

1. Will private providers lobby governments for the continuation or development of programs not in the public interest?

2. Will private operations skim off the profitable "cream of the crop" low-risk offenders, leaving the public system with the difficult and unprofitable management problems?

3. Will public contract requirements and monitoring systems be able to ensure that business motives do not override the objective of providing decent prison conditions?

CONCLUSION

Although involvement of the private sector in the correctional field has been successful in many instances, particularly in the provision of selected services, privatization is not a panacea for the major problems of prison overcrowding. The extent to which it may be a more cost effective method of operating prisons has yet to be adequately

(1) Ibid., p. 7.

(2) Mullen (1985), p. 5.

measured. Its major advantage appears to lie in the flexibility it allows, for example, in the provision of services.

The conclusions of jurisdictions which have studied the effects of privatization in the correctional field appear to be cautiously optimistic. The experience of the British Columbia Corrections Branch, for instance, was summarized as "generally, though not universally, positive".⁽¹⁾

The survey by the Criminal Justice Institute in the United States reported that there were more benefits than liabilities involved in operations by the private sector. The following major benefits were listed: staff savings, better quality service, more efficient operation, reduced cost and training requirements, decreased agency liability, better accountability, unique service provision and better use of space.⁽²⁾

A study prepared for the Correctional Service of Canada has concluded that privatization of services and privately-managed facilities can lead to flexible programs, new and innovative services and enhanced service delivery. On the other hand, the study warned that unless privatization is well planned, implemented and monitored, it can lead to "endangerment to public, staff and inmates, deterioration of inmates' rights" and labour unrest.⁽³⁾ The study recommended a strategic and cautious approach to the expansion of privatization of services, with the development of detailed guidelines and principles for implementation and evaluation. It advised that serious consideration be given to the privatization of a minimum security institution.

The recent study of the justice system in Canada prepared for the Task Force on Program Review recommended that the federal

(1) Harrison and Gosse (1985), p. 3.

(2) Camp (1984), p. 17.

(3) Friel (1985), p. 47.

government consider further privatization of prison food services, of education, vocational training, health care and employment of inmates, and of community-based services. It suggested that Canada avoid privatizing penitentiaries at present but encouraged experiments with limited pilot projects.

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A P P E N D I X

TABLE 1: Prison Industry Statute Analysis

States	Issues												States
	Private sector employment authorized	Private sector contracting authorized	Open market sales authorized	Incentives for private sector authorized	Prevailing and/or minimum wages mandated	Unemployment Compensation authorized	Workers' Compensation authorized	Prisoner voluntarism authorized	Project's impact on free world labor addressed	Rent/lease of property authorized	Wage deductions authorized	Employee status of prisoners addressed	
Alabama			No										Alabama
Alaska		Yes	Yes			No	Yes	Yes		Yes	Yes		Alaska
Arizona	Yes	Yes	Yes		Yes				Yes	Yes			Arizona
Arkansas													Arkansas
California	No	No	No		Yes	Yes							California
Colorado	Yes	Yes								Yes			Colorado
Connecticut		Yes	No			Yes							Connecticut
Delaware													Delaware
Florida	Yes		No						Yes	Yes	Yes		Florida
Georgia		No	No										Georgia
Hawaii			No										Hawaii
Idaho			Yes			No					Yes		Idaho
Illinois	No	No	No										Illinois
Indiana	Yes	Yes	Yes	Yes	Yes	No		Yes	Yes	Yes			Indiana
Iowa	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes		Yes		Iowa
Kansas	Yes		Yes		Yes		Yes	Yes		Yes			Kansas
Kentucky			No							Yes			Kentucky
Louisiana	Yes		Yes		Yes	No	Yes	Yes		Yes			Louisiana
Maine			Yes										Maine
Maryland			No										Maryland
Massachusetts		No				Yes							Massachusetts
Michigan	No	No	No										Michigan
Minnesota	Yes	Yes	Yes		Yes		Yes		Yes	Yes			Minnesota
Mississippi	No	Yes	Yes		No			Yes	Yes		Yes		Mississippi
Missouri			No										Missouri

Yes = Legislative Authorization Exists

No = Legislative Prohibition Exists

Blank space indicates that legislation neither specifically authorizes nor prohibits.

Source: Sexton, George E., Franklin C. Farrow and Barbara J. Auerbach, "The Private Sector and Prison Industries", National Institute of Justice, Research in Brief, U.S. Department of Justice, August 1985, p. 4.

TABLE 1: Prison Industry Statute Analysis (Cont'd)

States	Issues												States
	Private sector employment authorized	Private sector contracting authorized	Open market sales authorized	Incentives for private sector authorized	Prevailing and/or minimum wages mandated	Unemployment Compensation authorized	Workers' Compensation authorized	Prisoner voluntarism authorized	Project's impact on free world labor addressed	Rent / lease of property authorized	Wage deductions authorized	Employee status of prisoners addressed	
Montana			No			Yes							Montana
Nebraska	Yes		Yes		Yes	Yes			Yes	Yes			Nebraska
Nevada	Yes	Yes	Yes					Yes	Yes	Yes			Nevada
New Hampshire			Yes							Yes			New Hampshire
New Jersey	No	No	No			Yes							New Jersey
New Mexico	Yes	Yes	Yes		No		Yes			Yes			New Mexico
New York		No	No			No					Yes		New York
North Carolina			No			Yes							North Carolina
North Dakota	No	No	No										North Dakota
Ohio	Yes	Yes	Yes							Yes			Ohio
Oklahoma	Yes	Yes		Yes		Yes			Yes	Yes			Oklahoma
Oregon	Yes	Yes	Yes	Yes		Yes		Yes	Yes	Yes			Oregon
Pennsylvania	No	No	No										Pennsylvania
Rhode Island			No										Rhode Island
South Carolina			Yes			Yes							South Carolina
South Dakota		No	No										South Dakota
Tennessee	Yes	Yes	No	Yes	No	Yes	Yes		Yes	Yes			Tennessee
Texas		No	No										Texas
Utah	Yes	Yes	Yes	Yes		Yes	Yes			Yes			Utah
Vermont		No	Yes					Yes		Yes			Vermont
Virginia			No			Yes							Virginia
Washington	Yes		Yes	Yes	Yes	Yes	Yes		Yes	Yes			Washington
West Virginia		Yes	No										West Virginia
Wisconsin			No			Yes							Wisconsin
Wyoming		No	No			Yes							Wyoming

Yes = Legislative Authorization Exists

No = Legislative Prohibition Exists

Blank space indicates that legislation neither specifically authorizes nor prohibits.

Source: Ibid., p. 5



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